APPENDIX A—STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Federal Statutes

26 U.S.C. SEC. 2056. BEQUESTS, ETC., TO SURVIVING SPOUSE.

(a) ALLOWANCE OF MARITAL DEDUCTION.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsections (b), (c), and (d), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

(b) LIMITATION IN THE CASE OF LIFE ESTATE OR OTHER TERMINABLE INTEREST.—

* * * *

(4) VALUATION OF INTEREST PASSING TO SURVIVING SPOUSE.—In determining for purposes of subsection (a) the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this section—

(A) there shall be taken into account the effect which the tax imposed by section 2001, or any estate, succession, legacy, or inheritance tax, has on the net value to the surviving spouse of such interest; and

* * * *

(c) LIMITATION ON AGGREGATE OF DEDUCTIONS.—

(1) GENERAL RULE.—The aggregate amount of the deductions allowed under this section * * * shall not exceed 50 percent of the value of the adjusted gross estate, * * *.

District of Columbia Code
(1961 Edition)

SEC. 18-211. Renunciation of devices and bequests to spouse—Election of dower—Time limitations—Renunciations or elections by guardians or fiduciaries—Renunciations deemed to have been made when nothing passes under bequest or device—Maximum rights upon renunciation—Antenuptial or postnuptial agreements.

* * *

(e) By renouncing all claim to any and all devices and bequests made to her * * * by the will of her husband * * * the surviving spouse shall be entitled to such share or interest in the real and personal estate of the deceased spouse * * * which she * * * would have taken had the deceased spouse died intestate, except that in neither event shall the surviving spouse be entitled to more than one-half of the net estate bequeathed and devised by said will, * * *.

* * *

SEC. 18-701. Distribution—When to be made.

When the debts of an intestate, exhibited and proved or notified and not barred, shall have been discharged or settled, or allowed to be retained for as herein directed, the administrator shall proceed to make distribution of the surplus as provided for in this chapter.

* * *

SEC. 18-703. When surviving spouse entitled to one-third.

If there be a widow * * * and a child or children, or a descendant or descendants from a child, the widow * * * shall have one-third only.

* * *

SEC. 49-304. Repeal and savings provisions of 1901 Code.

Sections 1636 to 1643 of act Mar. 3, 1901, 31 Stat. 1434, ch. 854, provided that:

* * *

Sec. 1639. The enactment of this code is not to affect or repeal any act of Congress which may be passed between the date of this act and the date when this act is to go into effect; and all acts of Congress that may be passed hereafter are to have full effect as if passed after the enactment of this code, and, so far as such acts may vary from or conflict with any provision contained in this code, they are to have effect as subsequent statutes and as repealing any portion of this act inconsistent therewith.

United States Constitution

ARTICLE I, Section 8

The Congress shall have Power

[cl. 1] To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * *

[cl. 17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

* * *

APPENDIX B—OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Decided January 9, 1968

* * *

Before BAZELON, *Chief Judge*, and LEVENTHAL and ROBINSON, *Circuit Judges*.

PER CURIAM: This is an appeal from a summary judgment for the United States in an action for a federal estate tax refund. The relevant facts are stipulated. Mrs. Delmar, dissatisfied with the terms of her husband's will, exercised her option under 18 D.C. Code § 211 (1961)[1] to take one-third[2] of the "surplus" remaining in the estate after the payment of "debts."[3] In computing the estate tax appellants proceeded on the theory that the amount of property which the widow received by her election, and thus the amount eligible for the marital deduction, was a portion of the surplus remaining after the payment of estate taxes. Subsequently, appellants decided that they had improperly allowed the widow's share of the estate to be "reduced" by federal estate taxes since, they reasoned, due to the marital deduction,[4] nothing the widow received contributed to the incurrence of any tax.

This latter assumption, it is argued, follows from the purposes which Congress had in enacting the marital de-

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[1] "By renouncing all claim to any and all devises and bequests made to her . . . by the will of her husband . . . the surviving spouse shall be entitled to such share or interest in the real and personal estate of the deceased spouse . . . which she . . . would have taken had the deceased spouse died intestate . . . ." With slight changes in phraseology, this provision is now 19 D.C. CODE § 113 (1967).

[2] 18 D.C. CODE § 703 (1961), now codified in substance in 20 D.C. CODE § 303 (1967).

[3] 18 D.C. CODE § 701 (1961), now codified in substance in 20 D.C. CODE § 1901 (1967).

[4] INTERNAL REVENUE CODE OF 1954, § 2056.

duction. We agree with appellants that Congress, the national legislature, adopted the marital deduction to provide opportunity for equalization of the tax treatment of estates in common law and community property states. However, we disagree insofar as appellants contend that this purpose of the tax law modifies the meaning of the long-standing local statute wherein Congress provided that in the District of Columbia a dissenting widow could take one-third of the surplus after debts. The correct interpretation of the District of Columbia intestacy statute is set forth in the opinion of Judge Matthews in *Herson* v. *Mills*, 221 F. Supp. 714 (D.D.C. 1963). As the court noted in *Herson*, the District has rejected the doctrine of general equitable apportionment of estate taxes,[5] and in the absense of that doctrine *Herson* concluded that the entire amount of estate tax was deductible as a "debt" before computing the "surplus" in which the widow shares. Other jurisdictions have permitted the result for which appellants contend, either by specific statute or judicial adoption of general equitable apportionment of estate taxes.[6] However, we are not inclined to modify our settled course of decisions—either to upset the general law of decedent's estates in the District of Columbia merely to allow a dissenting widow a larger portion of the estate at the expense of the remaining legatees and the Government, or to carve out a narrow exception for the widow's intestate share, a course which other states have taken only through actions of their legislatures.

If the marital deduction provision of the tax law reflects a policy that Congress considers applicable to govern local law in the District of Columbia, Congress can easily pro-

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[5] Hepburn v. Winthrop, 65 App. D.C. 309, 83 F. 2d 566 (1936). A recent reaffirmation is District of Columbia v. Payne, — U.S. App. D.C. —, 374 F. 2d 261 (1966).

[6] *See In re* Glover's Estate, 371 P. 2d 361 (Hawaii 1962) (discussing cases and rejecting equitable apportionment).

vide a remedy. If Congress has been sluggish as a local legislature in making available to the District of Columbia benefits it has enabled the various legislatures to provide to the citizens of the states and commonwealths, petitions for relief from this anomaly are properly addressed to Congress.

Affirmed.

Circuit Judge Robinson did not participate in the disposition of this case.

APPENDIX C—JUDGMENT OF THE COURT OF APPEALS SOUGHT TO BE REVIEWED

* * *

Appeal from the United States District Court for the District of Columbia.

Before: BAZELON, *Chief Judge,* and LEVENTHAL and ROBINSON, *Circuit Judges.*

Judgment

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Curiam

Dated: January 9, 1968

Circuit Judge Robinson did not participate in the disposition of this case.